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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re L.P., a Person Coming Under the  
Juvenile Court Law.

CONTRA COSTA COUNTY  
CHILDREN & FAMILY SERVICES  
BUREAU,

Plaintiff and Respondent,

v.

S.J.,

Defendant and Appellant.

A154639

(Contra Costa County  
Super. Ct. No. J1701170)

S.J.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA  
COSTA COUNTY,

Respondent;

A156517

(Contra Costa County  
Super. Ct. No. J1701170)

CONTRA COSTA COUNTY  
CHILDREN & FAMILY SERVICES  
BUREAU et al.,

Real Parties in Interest.

In this Welfare & Institutions Code, section 300<sup>1</sup>, juvenile dependency proceeding, S.J., mother of L.P.<sup>2</sup>, appeals from an April 24, 2018 disposition order declaring the child a dependent of the court, removing the child from mother's custody, and granting mother reunification services. Mother also petitions for extraordinary writ review of a January 31, 2019 order following the 12-month status review, in which the court denied mother's request for the return of the child or continuation of reunification services to the 18-month status review, terminated reunification services, set a section 366.26 hearing to determine the child's permanent placement, and granted mother one supervised monthly visit pending the section 366.26 hearing. At mother's request, we temporarily stayed the section 366.26 hearing pending our resolution of the petition. Contra Costa County Children & Family Services Bureau (Bureau) opposes both the appeal and the writ petition.

On our own motion, we have consolidated the appeal and writ proceeding. As mother's arguments do not warrant relief, we affirm the disposition order, deny the petition for an extraordinary writ on the merits, and dissolve the temporary stay of the section 366.26 hearing.

### **FACTS<sup>3</sup>**

#### **I. Jurisdiction Hearing**

The family came to the attention of the Bureau in November 2017, when mother gave birth to L.P. after a 38-week pregnancy. At the time of the birth, both mother and L.P. tested positive for methamphetamines. When questioned by the Bureau social worker, mother admitted that during her pregnancy she had exposed the child to both

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<sup>1</sup> All further unspecified statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The original juvenile proceeding listed the child's initials as L.J. However, the initials on the child's birth certificate are L.P.

<sup>3</sup> The facts are taken from the various reports filed by the Bureau in the juvenile court. Because the child's father is not a party to these proceedings, our factual recitation focuses almost exclusively on mother's circumstances and her relationship with the child. We set forth only those facts as are necessary to resolve these appellate proceedings.

methamphetamines and alcohol, albeit she stopped using alcohol during the 22nd week of the pregnancy when she found out she was pregnant. Mother admitted she was an alcoholic (having used alcohol since the age of 12), had sought treatment in 2002 and 2003, and had been drug and alcohol free thereafter for several years. Mother had another child, who was 12 years old when L.P. was born. Following the death of her own mother in 2011 or 2012, mother began to drink heavily, stopped working, and lost her housing. Because she had lost her housing, mother gave the guardianship of the 12-year-old child to the maternal grandfather. Mother had been living on the streets for three years and was unemployed when she met L.P.'s father and she became pregnant with L.P. The child's maternal grandfather reported that mother had "been in treatment many times," and she knew how to get help.

Within days of L.P.'s birth, the Bureau filed a petition alleging that the court should find the child was a person described in section 300, subdivision (b) (failure to protect). At the jurisdiction hearing held at the end of December 2017, the court accepted mother's "no contest" admission to an amended petition alleging she had a chronic polysubstance abuse problem that placed the almost two-month-old child at ongoing risk of serious harm and neglect in that the child had been born with a positive toxicology. The court denied mother's request to place the child with mother at the inpatient drug treatment program that mother had entered shortly after the child's birth. Instead, the court granted mother's alternative request for liberal visitation, directing the Bureau staff to arrange visits of a minimum of one two-hour visit per week, supervised by either Bureau staff or the staff at mother's inpatient program, and thereafter as often as additional visits could be arranged. While the court initially scheduled the disposition hearing for February, it was later continued to March, and ultimately held on April 24.

## **II. April 24, 2018 Order Following Disposition Hearing**

Before the disposition hearing on April 24, the Bureau filed a January 30 report and a March 22 memorandum, recommending that the child be declared a dependent of the court and that the court grant mother six months of reunification services with liberal visitation. The Bureau social worker reported on the family's circumstances. The child

had been placed in a licensed foster custody home, was developing normally, and displayed no mental or physical effects related to being born with a positive toxicology. Mother had completed 90 days of her inpatient program and graduated in early February. Mother also participated in random drug testing and consistently tested negative for any substances. She had also completed a parenting course but had not submitted the completion certificate.

The Bureau social worker initially reported in January that mother's "major struggle is finding a suitable place to live when she graduates from her treatment program . . . . Housing assistance is one of the resources most needed yet very scarce in the community. It is imperative that [mother] find a support system to help her stabilize and continue with her services in order for [the child] to be returned to her care." However, by the March 22 update mother had moved into her sister's apartment in another county, which the Bureau social worker found was sufficient to house mother, the child, mother's sister, and the sister's six-year-old child. In the March 22 update, the Bureau social worker supported mother's request for increased unsupervised visits with the child, with the proviso that mother first secure reunification services for outpatient drug treatment in her new community and demonstrate an ability to provide for the child's basic needs.

At the April 24 hearing, the court stated it had read and would consider the Bureau's December 2017 detention/jurisdiction report, January 30 report, and March 22 memorandum. The court heard testimony from mother and the Bureau's social worker who had prepared the March 22 memorandum. The court also admitted as exhibits mother's "AA sign-in sheets" and a certificate of mother's "enrollment" in an outpatient program. The AA sign-in sheets evidenced that from early February (the time mother had completed her inpatient program) through April 24, mother had attended 22 sessions. The enrollment certificate indicated that on April 11, mother had enrolled in an outpatient program with a projected length of treatment of nine months.

At the conclusion of the hearing, the court explained that it was removing the child from mother's custody because there was a substantial probability that the child would not be safe even if mother received family maintenance services. The court specifically

noted its concerns with mother's new living arrangements with her sister and sister's six-year-old child, and mother's history of drug treatment and relapse, noting she was just at the beginning of her latest and "probably [her] first" attempt to address her substance abuse problem. In its written order, the court found, in pertinent part, that reasonable efforts had been made to prevent or eliminate the need to remove the child from the child's home; there was clear and convincing evidence that there was a substantial danger, or would be a substantial danger, if the child was returned to the home; there were no reasonable means to protect the child without removal; and placement of the child in mother's custody would be detrimental to the child. The court additionally found mother had made "partial" progress in alleviating or mitigating the causes necessitating the dependency, and she was granted reunification services. Mother was ordered to comply with a case plan that required her, among other things: (a) to "successfully participate in and complete a substance abuse treatment program . . . and receive a positive evaluation from the program," and (b) "to participate in a random drug/alcohol testing and all tests will be negative for six months. No shows will . . . be considered positive." The court directed the Bureau staff to arrange for visitation for a minimum of four two-hour weekly visits per month, which visits "may be supervised." The court scheduled a six-month status review for October 4.

Mother filed a timely notice of appeal from the April 24 order.

### **III. October 4, 2018 Six-Month Status Review**

Before the six-month status review set for October 4, the probation department filed a report recommending that the court continue mother's reunification services. By that time, the child had been in an out-of-home placement for 10 months. The Bureau social worker reported that during the five months since the last hearing, mother had submitted to random drug tests on 13 occasions with negative results, and she had failed to show on 9 occasions, considered to be positive results. Because mother claimed that the missed drug tests were due to transportation problems, the Bureau social worker met with mother in early August and give her public transportation tickets for six months. Despite the assistance, mother failed to consistently submit to random drug tests in

August through October 1; mother submitted to three random drug tests and she failed to show on four occasions. The Bureau social worker also reported on mother's visits with the child. Mother had been consistent in confirming and adhering to visit parameters, and, consequently, the visits had increased in time, with mother transitioning from "loosely" supervised visits at the Bureau's office, to "loosely" supervised visits in the community, to "unsupervised day visits."

The Bureau social worker concluded her report by noting that mother had made major strides in working on her sobriety and should be commended for completing her inpatient program, entering an outpatient program, and consistently visiting with the child. The Bureau social worker remained concerned with mother's progress given the number of no shows for random drug tests. The Bureau social worker also believed that, before the child was returned to mother's custody, overnight visits should be authorized to assess the child's attachment and safety in transitioning to mother's custody.

At the October 4 hearing, the court read and agreed with the Bureau's proposed findings and recommendations in its report prepared for that hearing. The court continued the child as a dependent of the court and granted mother another six months of reunification services. The court ordered that the Bureau was to arrange for mother to have visits of a minimum of "2 hours 4 times per month," which visits could be supervised at the discretion of the Bureau staff. The court also authorized the Bureau social worker to arrange for consecutive overnight visits for a maximum of 14 days. The court initially set the 12-month status review hearing for December 20, which was continued and ultimately held on January 31, 2019.

#### **IV. January 31, 2019 Order Following the 12-Month Status Review**

##### **A. December 20, 2018 Proceeding**

On December 19, the day before the scheduled December 20 hearing, the probation department filed a report asking the court for a continuance of 30 days to allow the Bureau time to arrange a 30-day overnight visit to assess if the child should be returned to mother's custody with family maintenance services. At the time of the

December 19 report, the child had been with mother for six days on an extended overnight visit as previously authorized by the court.

The Bureau social worker reported on mother's progress in addressing her substance abuse problem. Since the last review hearing on October 4, mother had randomly drug tested on six occasions with negative results, but she failed to appear for tests on October 10 and November 27. The Bureau social worker asked mother to submit to a drug test on December 12, but the results were not then known.

The Bureau social worker reported on information of mother's participation in the outpatient program based on reports from the program's staff and discussions with mother's primary program counselor in the month of November. Mother's primary program counselor explained that the program required mother to attend three group sessions and one individual counseling session per week, and to submit to random drug tests. The program counselor reported that, as of November 6, mother had tested negative for drugs from April through June and the rest of the test results were on file through a county Bureau program. The program counselor's "main issue" was mother's attendance: she had attended only 31 out of 70 group sessions, and 14 out of 20 individual counseling sessions. The program counselor "expressed she did not sense [mother] was using but that she was having time and transportation issues." Nonetheless, the program counselor reported that, for the period from November 1 through November 20, mother had a "good attitude," but she needed to attend group and counseling sessions, and she was "not meeting treatment goals." Consequently, on November 20, the outpatient program required mother to sign a "Special Interventions Treatment Contract (SIT)," which mandated that mother would be required to meet certain requirements including attending support groups and abstaining from drugs and alcohol, in order to remain in the program.

On November 6, the Bureau social worker met with mother to discuss and address her missed random drug tests and missed counseling sessions. Mother explained that because she was living with her sister, who worked full time, mother contributed to the household by taking care of the sister's child while the sister was at work. Mother was

unable to make group sessions held at 2 p.m. or 6 p.m. because she was babysitting her sister's child. However, mother reported she had gotten a babysitter for Friday nights so that she could attend group sessions consistently. Mother also claimed she had lost the bus tickets that the worker had given her but she had since found them in her sister's car. Mother stated she planned to get a job and work around her sister's schedule. Mother further claimed she continued to attend Narcotics Anonymous/Alcoholic Anonymous (NA/AA) meetings, and she sent the worker a copy of her attendance sheet. The Bureau social worker informed mother that her overnight visits with the child would increase once her outpatient program attendance improved and she provided documentation of that attendance. Mother's outpatient program counselor supported the Bureau's proposal to allow mother to have overnight visits with the child "as motivation."

The Bureau social worker also informed the court regarding mother's visits with the child. Since October, mother had transitioned from unsupervised day visits to a weekly overnight visit starting on November 10, to an extended overnight visit December 13 to December 19, the date of the report. On December 17, the Bureau social worker made an unannounced home visit while the child was in mother's custody on the extended overnight visit. The Bureau social worker had attempted to contact mother by telephone and email before the visit to see if she was home with the child, but the worker got no response before the visit. When the worker arrived at the house, mother was not home, and there was present a babysitter caring for the child and the child's young cousin (the child of mother's sister). The babysitter stated she was watching the children while mother was out "until later," and, while the babysitter was not supposed to let anyone into the home, she allowed the worker to see the child. The child appeared well, but was wearing only a diaper and being carried by the child's young cousin.

The Bureau social worker concluded the December 19 report by stating that, while mother continued to test clean and engage in services, there had been two more "no shows" for random drug tests and mother's progress in her outpatient program had been impacted by her lack of attendance. The Bureau social worker acknowledged that mother had the support of her family and had secured a babysitter, but the worker believed



mother needed to form a stronger support network to help ensure the child's needs would be met "by a sober adult in a stable home." The Bureau social worker noted visits "have continued to go well and [the child] continues to thrive and adapt through the transition to overnights with . . . mother."

At the December 20 hearing, and having read the Bureau's December 19 report, the court noted its serious concern regarding mother's lack of attendance at group and individual counseling sessions at the outpatient program. Mother's counsel informed the court that, since the receipt of the November reports from the outpatient program staff, the Bureau had received "a much better report from the program – that [mother] is fully engaged," and the Bureau social worker had authorized the recent overnight visit based on "an improved report" from the outpatient program. The court informed the parties that, before it would change its orders regarding the child's placement, the court wanted additional information provided by the staff of mother's outpatient program. With the parties' consent, the court continued the matter to January 17, 2019.

#### **B. January 17, 2019 Proceeding**

The Bureau submitted a January 15, 2019 report recommending that the court terminate mother's reunification services and set a section 366.26 hearing to determine the permanent placement for the one-year-old child. The Bureau's recommendation was based, in pertinent part, on mother's continued failure to demonstrate her ability to address her alcohol addiction problem. By that time, the Bureau had received the results of mother's November 27 random drug test (submitted under a wrong spelling of her name), which showed that mother tested positive for ethanol with a quantitative rate of 140 mg/dL, with the screen limit being 20 mg/dL. The Bureau also received two random drug test results with negative results from tests performed on December 12 and December 19. On December 13, mother also submitted to a drug test with negative results for all substances except ethanol because "Glucose detected. Unable to perform alcohol analysis." Thereafter, mother failed to submit to random drug tests on January 3 and January 8. When mother was questioned about the missed random drug tests, she

stated she was unable to submit to the January 8 test because she did not have any bus passes and it was hard to walk three miles in the rain with the child.

On January 9, the Bureau social worker spoke with mother's counselors at the outpatient program regarding mother's participation. Mother was no longer "on contract," she was attending group and individual sessions, she was providing urine analysis test results from a county testing facility, and mother had reported she had gotten her child back. However, the program counselor reported that mother needed to make up 38 group sessions, representing more than 50 percent of the sessions. Mother had also missed her individual counseling session on December 28 because she thought her counselor was not there but she had not called to confirm her counselor's absence. On January 4, 2019, mother attended one group session and one individual counseling session. According to the Bureau social worker, she had never received any information from mother's outpatient program counselors indicating that mother was "taking the program seriously," and she was "taking responsibility for her addiction." An outpatient program counselor had spoken to mother about her positive test result for ethanol, and mother had "excuses" and expressed her thoughts that the Bureau's social worker was "being hard" on her. The Bureau social worker also spoke with mother concerning the positive test result for ethanol. Mother stated it was not possible she had tested positive for alcohol and she did not understand how it happened. The Bureau social worker reported that mother had stopped attending the outpatient program three times a week and was only attending once a week on Fridays. Mother explained her limited attendance was due to the fact that she had no ride or anyone to watch the child. While the outpatient program provided a taxi service for participants, mother said "she [did] not need that right now."

The Bureau social worker concluded her assessment and evaluation by stating, in sum, that mother had shown poor judgment or a lack of judgment, and minimal behavior change during the dependency. The Bureau social worker noted that during her unannounced December 17 home visit, the worker recognized the babysitter as a former client of the worker; the babysitter had lost her own child after failing to reunify and had

substantiated child abuse allegations lodged against her as a babysitter. While mother cared for her child and asserted she was doing everything she could to get her child back, the Bureau social worker opined that mother did not understand the importance of fully engaging in treatment to maintain her sobriety. Mother continued to fail to attend the outpatient program sessions even after being warned of the consequences of her lack of participation, and mother continued to explain that her failure to submit to random drug tests was caused by transportation issues.

At the January 17 hearing, the court stated that it had read and would consider both the December 19 report, and the recently submitted January 15 report. The court specifically noted that the most recent report had addressed who mother had hired as a babysitter. In response, mother's counsel asked the court to continue the matter to allow mother to contest the Bureau's new recommendation to terminate mother's reunification services. The court agreed, and continued the matter to January 31, 2019. In the interim, and without objection by mother's counsel, the court cancelled overnight visits and ordered the Bureau social worker to arrange visits of "a minimum of 1 hour 1 time[] per month and must be supervised."

### **C. January 31, 2019 Proceeding**

Before the January 31 hearing, the Bureau filed a memorandum updating the court on the family's situation. The Bureau social worker reported that, following the court hearing on January 17, she had met with mother who stated she wanted to let the worker know that she was scared, she had "a slip up," and she was trying to re-enroll in the inpatient program that she had previously attended during the dependency. Mother also submitted to a random drug test on January 17, and the test was negative. The social worker commended mother for accepting responsibility for her relapse and for trying to reenroll in the inpatient program. Mother later learned she was not eligible to attend the inpatient program. She informed the Bureau social worker that she (mother) intended to increase her participation at her outpatient program by attending sessions three times a week and attending a "90 meetings in 90 days" program. To accommodate mother's schedule and missed visits, the Bureau social worker arranged for mother's supervised

visits with the child to occur on Fridays for more than one hour for the “next couple of scheduled visits.”

At the January 31 hearing, the court indicated it had read and would consider the Bureau’s reports prepared for the December 20 and January 17 hearings, as well as the Bureau’s latest report prepared for the January 31 hearing. The parties called no witnesses and counsel presented argument addressing the Bureau’s recommendations that the court terminate mother’s reunification services, set a section 366.26 hearing to determine the child’s permanent placement, and grant mother a minimum of supervised one-hour monthly visits pending the next court date. The Bureau’s counsel asked the court to follow the Bureau’s recommendations based on the information in its filed reports. The child’s counsel agreed with the Bureau’s recommendations based on the “grave concerns” regarding the babysitter chosen to watch the child while the child was in mother’s custody. Mother’s counsel argued that termination of mother’s services was not warranted because mother had “increased her participation in her outpatient program,” and she was beginning attendance at a “90 in 90 AA/NA meeting” program. Mother’s counsel also asked the court not to decrease mother’s visits to once a month, and requested the court to allow visits twice a month pending the next court date. Counsel explained that mother and the child had developed a bond, having spent a significant amount of time together in overnight visits especially over the holidays, and the Bureau was in the progress of scheduling “makeup” visits because mother had not seen the child for three weeks. Mother’s counsel further informed the court that the babysitter hired by mother did not have “an open CPS case,” but had a previous CPS case, and she had been clean and sober for a significant time and had one of her own children in her custody. In response, the Bureau’s counsel informed the court that the babysitter did not have an active case but “in fact, her parental rights [had] already been terminated . . . .”

Following counsels’ arguments, the court stated its reasons for adopting the Bureau’s recommendations exactly as they were written in the January 17 report: “I have read and considered the reports. . . . I am concerned that [mother] had not taken

responsibility for the problems that she had. I am especially looking at the court memo of January 17th, [2019]. [¶] . . . I am very concerned about [mother's] deception, her dishonesty, and the danger that I think she has placed this child in, and she has known exactly what she was doing.” Accordingly, the court found, in pertinent part, that mother had made only “partial” progress in mitigating the causes necessitating the child’s out of home placement, that “by clear and convincing evidence,” the Bureau had provided reasonable services to mother, and, “by clear and convincing evidence,” the return of the child to mother’s custody would create a substantial risk of detriment to the child. At the request of the Bureau’s counsel, the court noted it also found that the child’s return to the mother would be detrimental because there was overwhelming evidence of mother’s failure to participate regularly and make substantial progress in her treatment plan given mother’s recent relapse and her failure to offer any evidence to the contrary. The court’s factual basis for the detrimental finding was not added to its written order. The court also adopted the Bureau’s recommendation as to future visits, directing the Bureau to arrange supervised visits between mother and the child “for a minimum of 1 hour 1 time[] per month,” pending the section 366.26 hearing scheduled for May 16, 2019. The juvenile court commented that it assumed the Bureau staff had already started to look for a “concurrent” (prospective adoptive) home for the child because the child’s current foster home was not a concurrent home.

## **DISCUSSION**

### **I. Appeal Challenging April 24, 2018 Order Following Disposition Hearing**

#### **A. Substantial Evidence Supports Finding of Substantial Risk of Detriment to Child If Returned to Mother at Disposition**

“ ‘After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing, the court must decide where the child will live while under the court’s supervision.’ [Citation.]” (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.) “Before the court may order a child physically removed from his or her parent’s custody, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no

reasonable means by which the child can be protected without removal. [Citations.] The jurisdictional findings are prima facie evidence the minor cannot safely remain in the home. [Citations.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citation.]” (*In re T.V.* (2013) 217 Cal.App.4th 126, 135–136.) “ ‘The court may consider a parent’s past conduct as well as present circumstances.’ ” (*In re A.S.*, *supra*, at p. 247.) “We review the court’s dispositional findings for substantial evidence. [Citations.]” (*In re T.V.*, *supra*, at p. 136.)

Mother argues there was insufficient evidence to support the disposition order because the court failed to adequately consider that at the time of the April 2018 hearing she had completed a 90-day inpatient program, had maintained her sobriety for five months, had enrolled in an outpatient program, and had found suitable housing in the residence of the child’s maternal aunt. However, on appeal, we do not review the record for substantial evidence that would support a finding in mother’s favor, as she suggests by her arguments. Rather, our review is limited to determining whether the record contains substantial evidence to support the court’s disposition, and based on our review of the record, we so conclude there is such evidence.

In making its dispositional finding that the child’s return to mother’s custody would create a substantial risk of detriment, the juvenile court was mandated to consider that “the Legislature has declared, ‘The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child . . . .’ ” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) Thus, the juvenile court properly considered that mother was in the early stages of addressing the negative effects of her long-standing chronic substance abuse, which was the primary reason leading to the dependency. By the date of the hearing, mother had only recently completed an inpatient program, and she had just enrolled in an outpatient program with a projected treatment period of nine months. Given the mother’s substance abuse history of treatments and relapses, the juvenile court reasonably found that mother’s five months of sobriety was not sufficient to demonstrate

that the child could be safely returned to mother's custody under family maintenance services. "[A]lthough [mother] points to other measures short of removal she contends would have protected the [child], she has not shown the court's removal order was not supported by substantial evidence given the facts we have discussed. The evidence supports the finding that the measures [mother] suggests, including ['close supervision and monitoring'] . . . would not have addressed the substantial risk evident in leaving the [child] with [mother] unsupervised." (*In re D.C.* (2015) 243 Cal.App.4th 41, 56.)

Because there is no evidence that mother's housing situation *alone* was the basis for the disposition order, we do not need to address her argument challenging the court's concerns about her housing or her claim that the Bureau staff failed to provide reasonable services to assist her in finding housing that would be acceptable to the court.

Mother further contends that while the juvenile court explicitly found that reasonable efforts had been made to prevent the child's removal, the court committed prejudicial error by failing to explicitly state the factual basis for removing the child. According to mother, the court's failure to make the required finding in this case was harmful because even though she had completed or remained engaged in all the services required by her service plan, she had received no services to assist her with finding housing that would be acceptable to the juvenile court, and neither the Bureau nor the court considered any services that might have enabled the child to remain in mother's custody. We conclude mother's claim does not warrant reversal.

The juvenile court is statutorily required to state the factual basis supporting a decision to remove a child from parental custody. (§ 361, subd. (e).) Section 361, subdivision (e), reads, in pertinent part: "The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . . [and] [t]he court shall state the facts on which the decision to remove the minor is based." In this case, the juvenile court made it plain that its decision for removal was not based solely on mother's housing, as she contends, but removal was also required based on the fact that mother had not sufficiently progressed in her programs and services to address her long-standing chronic substance abuse to allow

for the return of the child with family maintenance services. As stated at the disposition hearing, while the court believed mother had been “trying to get all of the effects of what drugs did to [her] taken care of,” nonetheless, it found it was “way too soon for . . . family maintenance.” Additionally, the court’s finding of the need for removal of the child was supported by its consideration of the Bureau’s reports, which included extensive information regarding mother’s substance abuse history and her participation in services to address that issue through the date of the disposition hearing. Accordingly, we deem any error in the court’s findings supporting its disposition order to be harmless as it is not reasonably probable that the court would have made a finding in favor of returning the child to mother’s custody at the time of the disposition hearing. (See *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218 [“cases involving a court’s obligation to make findings regarding a minor’s change of custody . . . have held the failure to do so will be deemed harmless where ‘it is not reasonably probable such finding, if made, would have been in favor of continued parental custody’ ”].)

## **II. Writ Petition Challenging January 31, 2019 Order Following 12-Month Status Review**

In her petition challenging the January 31, 2019 order, following the 12-month status review, mother contends (1) the record does not contain substantial evidence to support the court’s finding that the child would have been at substantial risk of detriment if returned to mother’s custody at that time; (2) the court erred in terminating reunification services after denying her request to continue services to the 18-month status review; and (3) the court abused its discretion in granting her one supervised monthly visit following termination of reunification services and pending the section 366.26 hearing set for May 2019. As now discussed, we conclude mother’s contentions do not warrant reversal.

### **A. Substantial Evidence Supports Finding of Substantial Risk of Detriment to Child If Returned to Mother at 12-Month Status Review**

At the 12-month status review, the juvenile court is to “order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a



preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment.” (§ 366.21, subd. (f)(1).) “ ‘In evaluating detriment, the juvenile court must consider the extent to which the parent participated in reunification services. [Citations.] The court must also consider the efforts or progress the parent has made toward eliminating the conditions that led to the child’s out-of-home placement.’ ” (*In re E.D.* (2013) 217 Cal.App.4th 960, 966.) And, “[i]n section 366.21, subdivision (f), the Legislature has determined that the failure of a parent . . . to participate regularly in any court-ordered treatment programs is sufficient, in the absence of other evidence, to support a finding that a return to parental custody would create a substantial risk of detriment to the child.” (*In re Heather B.* (1992) 9 Cal.App.4th 535, 561.)

Mother argues there was insufficient evidence to support the juvenile court’s refusal to return the child to her custody at the 12-month status review, asking us to consider her participation in services and the quality of her visits with the child. However, our review is limited to determining whether there is substantial evidence to support the court’s refusal to return the child to mother’s custody at the 12-month status review, and, we so conclude there is such evidence. The record shows that for the review period in question, from October 4, 2018 through January 31, 2019, mother failed to regularly attend her outpatient program, failed to consistently participate in random drug tests, and, had not acknowledged her November recent relapse and use of alcohol until two weeks before the 12-month status review. Contrary to mother’s contention, the evidence demonstrating her lack of compliance with the case plan requirements directed at addressing her substance abuse problem, raised a serious concern regarding her ability to safely parent the child and supported the court’s finding that return of the child would create a substantial risk of detriment. This is especially so given that mother presented no independent evidence by way of reports, letters, or testimony of professionals who worked with her, showing that she was capable of taking custody of the child on a full-time basis with family maintenance services at the 12-month status review.

**B. Substantial Evidence Supports Juvenile Court's Termination of Services Following Refusal to Extend Services to 18-Month Status Review**

At the 12-month status review, the juvenile court can order an additional six months of reunification services if a parent has met all of the following criteria: (1) consistently and regularly visited the child; (2) made significant progress in resolving the problems that led to the child's removal from the home; and (3) demonstrated the capacity and ability both to complete the objectives of the court-ordered treatment plans and provide for the child's safety, protection, physical and emotional well-being, and special needs. (§ 366.21, subd. (g)(1)-(3).)

Mother contends there is insufficient evidence to support the court's termination of reunification services following its refusal to extend services to the 18-month status review, again relying on her participation in services and the quality of her visits with the child at the time of the 12-month status review. However, mother's visits with the child and her participation in services do not demonstrate that she met the statutory criteria for extending services beyond twelve months. (See *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143.) Specifically, such evidence does not necessarily show nor require a finding that mother made significant progress in resolving the problems that led to the child's removal from the home or demonstrate her capacity and ability to complete the objectives of the court-ordered treatment plans. As we have noted, the record evidence concerning the review period of October 4 to January 31 shows that mother failed to regularly attend her outpatient program, failed to consistently participate in random drug tests, and, had not acknowledged her November relapse and use of alcohol until two weeks before the 12-month status review. Such record evidence supports the juvenile court's explicit finding that mother had made only partial progress in addressing the primary problem of substance abuse that led to the child's removal. More significantly, by its ruling regarding mother's progress, the juvenile court implicitly found that mother had failed to meet one of the criteria for an extension of services (demonstrating significant progress in resolving the problems that led to the child's removal). Consequently, we need not

address mother's contentions regarding the other two criteria for an extension of services (the quality of her visits with the child and her capacity and ability both to complete the objectives of her treatment plan and provide for the child's safety, protection, physical and emotional well-being, and special needs).

**C. Juvenile Court Did Not Abuse Its Discretion in Granting One Supervised Monthly Visit Between Termination of Reunification Services and Pending Section 366.26 Hearing Set for May 2019**

Mother also challenges the juvenile court's order granting her one supervised monthly visit between termination of reunification services and the pending section 366.26 hearing set for May 2019. She contends that until January 2019, she had been seeing the child four times a month and visits had been going well. While her overnight visits had been suspended in January 2019, the reason was based on "generalized concerns" and not because anything specific had happened to the child. She then argues that to reduce visits from four times a month to once a month was not in the child's best interest, particularly when one considers that at the time of the 12-month status review the child had not yet been placed in a "concurrent" (prospective adoptive) home, and therefore it was likely the child would undergo another transition and lose yet another important person in the near future. We see no merit to mother's argument.

Our review of the court's visitation order is limited to a consideration of whether the reduction of visits was an abuse of discretion. (See *In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.) "Because circumstances have placed [the] child at substantial risk of harm and since intervention by the juvenile court is deemed necessary to protect the child, visitation arrangements, albeit important, are but a partial component of a family's case plan. The family plan must focus on the child's best interests and on the elimination of conditions which led to the juvenile court's finding that the child has suffered, or is at risk of suffering, harm specified in section 300. (§ 362, subd. (c).)" (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1375–1376.) The record shows that prior to the January 17, 2019 hearing, the court had authorized the Bureau to arrange "at a minimum" four visits a month to be supervised at the discretion of the Bureau staff. At

the end of the January 17, 2019 hearing, and, without objection by mother, the court reduced visits to “a minimum of” one monthly supervised visit, pending the hearing set for January 31, 2019. At the hearing on January 31, 2019, for the 12-month status review, the court appropriately focused initially on mother’s efforts to reunify with the child. Following its decision to terminate reunification services, the court properly shifted its focus to a determination of the child’s best interests as to continued visits with mother pending the scheduled section 366.26 hearing in May 2019. The juvenile court reasonably determined that for the four months between termination of reunification services and the scheduled section 366.26 hearing, the Bureau should arrange “at a minimum” one monthly supervised visit. Contrary to mother’s appellate contention, the visitation order allowed the Bureau “the flexibility necessary to rapidly accommodate the evolving needs” of the child should more frequent visits be in the child’s best interests due to changes in the child’s circumstances and placement. (*In re Moriah T.*, *supra*, at p. 1376.) Accordingly, we see no reason to direct the juvenile court to modify the visitation order.

### **DISPOSITION**

In A154639, the order filed on April 24, 2018 is affirmed.

In A156517, the petition for an extraordinary writ is denied on the merits. (Welf. & Inst. Code, § 366.26, subd. (I); Cal. Rules of Court, rule 8.452(h).) The temporary stay, issued by this court on March 12, 2019, is dissolved. Our decision is final immediately. (Cal. Rules of Court, rules 8.452(i) & 8.490(b).)

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Petrou, J.

WE CONCUR:

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Fujisaki, Acting P.J.

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Wiseman, J.\*

*A154639/A156517*

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\* Retired Associate Judge of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.